



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2011

Ms. Luz E. Sandoval Walker
Assistant City Attorney
City of El Paso
810 Overland
El Paso, Texas 79901

OR2011-00188

Dear Ms. Walker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 406015 (2010-10-50-AG).

The El Paso Police Department (the "department") received two requests for specified police reports. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under

this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Because report no. 10-276214 was used or developed in an investigation of child abuse or neglect, the documents are within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, report no. 10-276214 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold report no. 10-276214 from disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. The relevant language of section 58.007(c) of the Family Code reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c); *see id.* § 51.03(a)–(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of title 3 of Family Code). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we agree report no. 10-288187 consists of law enforcement records involving a

¹Because section 552.101 is dispositive, we do not reach your claim under section 552.108 for report no. 10-276214.

juvenile suspect. It does not appear any of the exceptions in section 58.007 apply; therefore, report no. 10-288187 is confidential pursuant to section 58.007(c) of the Family Code. The department must withhold report no. 10-288187 in its entirety from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.²

In summary, the department must withhold report no. 10-276214 from disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold report no. 10-288187 in its entirety from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/vb

Ref: ID# 406015

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because section 552.101 is dispositive, we do not reach your claim under section 552.108 for report no. 10-288187.